

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY DARNELL McMILLIAN,)	
)	
Petitioner,)	Case No. 1:06-cv-57
)	
v.)	
)	Honorable Richard Alan Enslen
MARY BERGHUIS,)	
)	
Respondent.)	<u>ORDER DENYING APPLICATION</u>
)	<u>TO PROCEED IN FORMA PAUPERIS</u>

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. Petitioner has requested leave of court to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) and has filed an affidavit of indigence. The filing fee for a habeas corpus action is \$5.00. 28 U.S.C. § 1914(a). The Court should only grant leave to proceed *in forma pauperis* when it reasonably appears that paying the cost of this filing fee would impose an undue financial hardship. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). It is not unreasonable to require a prisoner to devote a small portion of his discretionary funds to defray a fraction of the cost of his litigation. *See Lumbert v. Illinois Dep't of Corr.*, 827 F.2d 257, 267 (7th Cir. 1987).

Petitioner has filed a trust account statement, which shows that over the past six months Petitioner has had an average monthly deposit of \$92.24. At the time of filing his Petition, Petitioner had a spendable balance of \$30.98. Petitioner's financial documents indicate that he has sufficient resources to pay the \$5.00 filing fee. Therefore, Petitioner is not entitled to proceed *in forma pauperis* in this action. Petitioner has thirty days from the date of entry of this Order to pay

the \$5.00 filing fee. If Petitioner fails to pay the filing fee within the thirty-day period, his case will be dismissed without prejudice. Accordingly:

IT IS HEREBY ORDERED that Petitioner's application for leave to proceed *in forma pauperis* (Dkt. No. 2) is **DENIED**.

IT IS FURTHER ORDERED that within thirty days hereof, Petitioner shall pay the \$5.00 filing fee to the Clerk of this Court. Petitioner's failure to comply with this Order will result in dismissal of this case without prejudice

DATED in Kalamazoo, MI:
February 10, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court
399 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."